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2014 IL App (3d) 120851-U

Order filed November 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit
)	Tazewell County, Illinois
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0851
v.)	Circuit No. 11-TR-9628
)	
JOHN S. RAY,)	Honorable
)	Richard D. McCoy
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Restricted driving permit issued to defendant was unconstitutionally vague where it failed to specify precise hours and locations where defendant could drive.

¶ 2 Defendant, John S. Ray, was issued citations for speeding and driving while license suspended. Following a jury trial, defendant was convicted of driving while license suspended for violating the provisions of his restricted driving permit. The trial court sentenced defendant to 180 days in jail. On appeal, defendant argues that his restricted driving permit was unconstitutionally vague. We reverse.

¶ 3 In June 2011, defendant was driving his motorcycle in Creve Coeur when he was pulled over by Officer Jeffrey Miller of the Creve Coeur police department. Defendant was driving on a restricted driving permit (RDP). The permit indicated that it was issued to defendant and listed defendant's home address in Pekin. The permit stated as follows:

“Purpose: Corrected Employment Only

Restrictions:

SELF EMPLOYED &/OR FAMILY-OWNED BUSINESS
INSANE INK TATTOO
1018 DERBY STREET
PEKIN, IL

WORK HOURS

12 NOON – 12 MIDNIGHT
MONDAY THROUGH SATURDAY
OVERTIME AND RADIUS AS REQUIRED FOR SELF
EMPLOYMENT RELATED DUTIES
SUBJECT TO LAW ENFORCEMENT VERIFICATION

WHILE TRAVELING OUT OF STATE AUTHORIZES
PERMITTEE ADDITIONAL TRAVEL TIME TO DRIVE
TO AND FROM HIS HOTEL AND THE VARIOUS WORK
LOCATIONS IN CONJUNCTION WITH SELF
EMPLOYMENT RELATED DUTIES.

AUTHORIZES PERMITTEE ADDITIONAL TRAVEL
TIME OUTSIDE OF THE LISTED WORK HOURS TO
DRIVE TO AND FROM THEIR RESIDENCE AND
WORK LOCATION. AUTHORIZES PERMITTEE TO
DRIVE IN CONJUNCTION WITH SELF
EMPLOYMENT RELATED DUTIES WITHIN THE
LISTED WORK HOURS & RADIUS.”

Miller issued defendant citations for speeding (625 ILCS 5/11-601(b) (West 2010)) and driving while license suspended (625 ILCS 5/6-303 (West 2010)).

¶ 4 The case proceeded to a jury trial. Miller testified that on June 14, 2011, at approximately 7:25 p.m., he was on patrol traveling southbound on South Main Street in Creve Coeur. Between the 700 and 800 blocks of Main Street, the speed limit increases from 40 to 45 miles per hour. At about that location, Miller heard a loud sound coming from a motorcycle. The motorcycle was being driven by defendant, who also traveling southbound on Main Street. Defendant was traveling in front of Miller with another car between them. Miller passed the other vehicle and “started pacing” defendant, keeping the distance between his vehicle and defendant's motorcycle consistent while confirming his speed on his radar and speedometer. According to his radar unit and speedometer, Miller was driving 55 miles per hour. The speed

limit in that location is 45 miles per hour. Miller turned on his overhead lights and initiated a traffic stop of defendant.

¶ 5 Miller asked defendant for his driver's license and proof of insurance. Defendant gave Miller proof of insurance and his restricted driving permit. Miller asked defendant where he was coming from. Defendant responded that he had just bought gas at the Freedom gas station in Creve Coeur after leaving his job in Pekin. Miller estimated that the gas station is six to eight miles from defendant's job. Miller determined that defendant was violating the provisions of his restricted driving permit by driving to Creve Coeur for gas. As a result, Miller issued defendant citations for speeding and driving while license suspended.

¶ 6 Defendant testified that at approximately 7:25 p.m. on June 14, 2011, he left the tattoo shop he owns in Pekin and drove to the Freedom gas station in Creve Coeur for gas. As he was returning home from the gas station, Miller pulled him over. He explained that he went to the gas station in Creve Coeur because it has 100 octane gasoline, which he needs for his motorcycle. It is the only gas station in Tazewell County with that type of gas. When counsel asked defendant if he did anything in addition to purchasing gasoline in Creve Coeur, defendant stated: "I hand out business cards everywhere I go, put them on boards, fliers."

¶ 7 Defendant testified that he looked at his speedometer as he travelled along the 700 block of Main Street in Creve Coeur. According to his speedometer, he was driving 39 miles per hour. As he entered the 800 block of Main Street, he "was going no faster than 40 miles an hour."

¶ 8 On rebuttal, Miller testified that defendant did not tell him he had been advertising or passing out business cards in Creve Coeur on June 14, 2011. Miller further testified that the Freedom gas station in Creve Coeur does not carry 100 octane gasoline.

¶ 9 The jury found defendant not guilty of speeding but guilty of driving while license suspended. Defendant filed a motion for judgment notwithstanding the verdict or for a new trial. The trial court denied defendant's motion and sentenced defendant to 180 days in jail.

¶ 10 I

¶ 11 Respondent argues that his RDP was unconstitutionally vague because it failed to clearly identify when and where he was allowed to drive.

¶ 12 A vagueness challenge is rooted in due process and examines whether a law or restriction gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 27. A provision is unconstitutionally vague when a person of common intelligence must necessarily guess at its meaning. *PBM Stone, Inc. v. Palzer*, 251 Ill. App. 3d 390, 395 (1993). The party challenging a provision as unconstitutionally vague must show that it does not provide effective notice as to what conduct is prohibited. *Morris*, 2014 IL App (1st) 130512, ¶ 27.

¶ 13 When a regulation vests discretionary power in one or more individuals, it must provide definite terms and intelligible standards to guide the exercise of discretion. *Palzer*, 251 Ill. App. 3d at 395-96. Failure to provide such standards renders the regulation void for vagueness. See *id.* at 396. A statute so vague that it provides no guidelines for enforcement may permit 'a standardless sweep' allowing policemen, prosecutors, and juries to follow their personal predilections. *People v. Anderson*, 148 Ill. 2d 15, 29 (1992) (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)).

¶ 14 A "restricted driving permit" is a "document which grants and specifies limited privileges to drivers of motor vehicles who have had their full driving privileges suspended, revoked or cancelled." 625 ILCS 5/1-173.1 (West 2010). The Secretary of State may issue persons convicted of certain offenses "a restricted driving permit granting the privilege of driving a

motor vehicle between the petitioner's residence and petitioner's place of employment or within the scope of the petitioner's employment related duties" if the petitioner demonstrates that no alternative means of transportation is reasonably available and that the petitioner will not endanger the public safety or welfare. 625 ILCS 5/6-205(c)(1) (West 2010); 625 ILCS 5/6-206(c) (West 2010). An individual seeking a non-probationary RDP must also prove that an undue hardship would result from not being issued a restricted driving permit. 625 ILCS 5/6-205(c)(1) (West 2010); 92 Ill. Admin. Code § 1001.420(a). A person who drives when his driver's license is suspended or revoked, "except as may be specifically allowed by a *** restricted driving permit" is guilty of a Class A misdemeanor. 625 ILCS 5/6-303(a) (West 2012).

¶ 15 The Illinois Administrative Code contains regulations relating to the issuance of restricted driving permits. See 92 Ill. Admin. Code § 1001.420 (2007). The regulations provide that when an employment-related RDP is issued "[a]ppropriate limits will be established for necessary on-the-job driving." 92 Ill. Admin. Code § 1001.420(d)(1) (2007). "The days, hours and mileage limits will not exceed those absolutely necessary for the accomplishment of the petitioner's primary employment and shall be limited to a maximum of 12 hours per day and 6 days per week unless the request for increased limits is substantially documented, such as through an employer's verification of the petitioner's work schedule." *Id.*

¶ 16 Here, defendant's RDP lists his "work hours" as 12:00 p.m. to 12:00 a.m., Monday through Saturday, but further provides: "[o]vertime and radius as required for self employment related duties subject to law enforcement verification." Defendant's RDP further states that defendant is authorized "to drive in conjunction with self-employment related duties within the listed work hours & radius."

¶ 17 The provisions above, which authorize defendant to drive outside of his listed “work hours” and in a “radius” “as required for” or “in conjunction with” “self employment related duties,” are vague and indefinite. They fail to define the “radius” within which defendant can drive. They also allow defendant unlimited “overtime” to drive. These provisions violate both the Code and its accompanying regulations because they do not set forth specific limits on when and where defendant can drive. See 625 ILCS 5/1-173.1 (West 2010) (RDP specifies driver’s limitations); 92 Ill. Admin. Code § 1001.420(d)(1) (RDP limitations include days, hours and mileage). Without specific time and distance limitations, a driver of ordinary intelligence does not know what conduct is prohibited so that he may act accordingly.

¶ 18 Additionally, without definite time and distance standards, the RDP fails to provide guidelines for enforcement. The RDP allows defendant to drive after working hours and in locations “as required for self employment related duties subject to law enforcement verification.” However, the RDP contains no guidelines for law enforcement officers to follow to determine if the defendant’s driving is “required for self employment related duties” or outside the scope of the RDP. Similarly, without specific time and location restrictions, prosecutors and jurors are free to follow their personal predilections in deciding whether defendant violated the terms of his RDP. See *Anderson*, 148 Ill. 2d at 29 (quoting *Kolender*, 461 U.S. at 358).

¶ 19 The RDP in this case fails to set forth definite time and distance limitations on defendant. Absent such limitations, the RDP is void for vagueness. See *Palzer*, 251 Ill. App. 3d at 396.

¶ 20 The judgment of the circuit court of Tazewell County is reversed.

¶ 21 Reversed.